

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**HOUSE BILL 348**

**46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003**

**INTRODUCED BY**

Richard D. Vigil

**AN ACT**

**RELATING TO THE PUBLIC EMPLOYEES RETIREMENT ACT; PROVIDING THAT CERTAIN PERSONS RETIRED AND RECEIVING RETIREMENT BENEFITS PURSUANT TO THAT ACT SHALL NOT BE REQUIRED TO SUSPEND BENEFITS WHEN EMPLOYED BY AN AFFILIATED PUBLIC EMPLOYER.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. Section 10-11-3 NMSA 1978 (being Laws 1987, Chapter 253, Section 3, as amended) is amended to read:**

**"10-11-3. MEMBERSHIP--REQUIREMENTS--EXCLUSIONS--TERMINATION.--**

**A. Except as may be provided for in the Volunteer Firefighters Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act, the Educational Retirement Act and the provisions of Sections 29-4-1 through 29-4-11 NMSA 1978 governing the state police pension fund, each employee and**

underscored material = new  
[bracketed material] = delete

underscored material = new  
[bracketed material] = delete

1 elected official of every affiliated public employer shall be a  
2 member of the association, unless excluded from membership in  
3 accordance with Subsection B of this section.

4 B. The following employees and elected officials  
5 are excluded from membership in the association:

6 (1) elected officials who file with the  
7 association a written application for exemption from membership  
8 within thirty days of taking office;

9 (2) elected officials who file with the  
10 association a written application for exemption from membership  
11 within thirty days of the date the elected official's public  
12 employer becomes an affiliated public employer;

13 (3) employees designated by the affiliated  
14 public employer as seasonal or student employees;

15 (4) employees who file with the association a  
16 written application for exemption from membership within thirty  
17 days of the date the employee's public employer becomes an  
18 affiliated public employer;

19 (5) employees of an affiliated public employer  
20 that is making contributions to a private retirement program on  
21 behalf of the employee as part of a compensation arrangement  
22 who file with the association a written application for  
23 exemption within thirty days of employment, unless the employee  
24 has previously retired under the provisions of the Public  
25 Employees Retirement Act; [and]

underscored material = new  
[bracketed material] = delete

1 (6) employees of an affiliated public employer  
2 who have retired under and are receiving a pension pursuant to  
3 the provisions of the Educational Retirement Act; and

4 (7) employees of an affiliated public employer  
5 who have retired under and are receiving a pension pursuant to  
6 the Public Employee Retirement Act and who begin employment  
7 with an affiliated public employer at least twelve months after  
8 retirement.

9 C. Employees designated as seasonal and student  
10 employees shall be notified in writing by their affiliated  
11 public employer of the designation and the consequences of the  
12 designation with respect to membership, service credit and  
13 benefits. A copy of the notification shall be filed with the  
14 association within thirty days of the date of employment.

15 D. An exemption from membership by an elected  
16 official shall expire at the end of the term of office for  
17 which filed.

18 E. Employees and elected officials who have  
19 exempted themselves from membership may subsequently withdraw  
20 the exemption by filing a membership application. Membership  
21 shall commence the first day of the first pay period following  
22 the date the application is filed.

23 F. The membership of an employee or elected  
24 official shall cease if the employee terminates employment with  
25 an affiliated public employer or the elected official leaves

underscored material = new  
[bracketed material] = delete

1 office and the employee or elected official requests and  
2 receives a refund of member contributions. "

3 Section 2. Section 10-11-8 NMSA 1978 (being Laws 1987,  
4 Chapter 253, Section 8, as amended) is amended to read:

5 "10-11-8. NORMAL RETIREMENT--SUSPENSION. --

6 A. A member may retire upon fulfilling the  
7 following requirements:

8 (1) a written application for normal  
9 retirement, in the form prescribed by the association, is filed  
10 with the association prior to the selected date of retirement;

11 (2) employment is terminated with all  
12 employers covered by any state system or the educational  
13 retirement system prior to the selected date of retirement;

14 (3) the member selects an effective date of  
15 retirement that is the first day of a calendar month; and

16 (4) the member meets the age and service  
17 credit requirement for normal retirement specified in the  
18 coverage plan applicable to the member.

19 B. The amount of normal retirement pension is  
20 determined in accordance with the coverage plan applicable to  
21 the member.

22 C. If a member retires and is subsequently employed  
23 by any affiliated public employer, the retired member's pension  
24 will be suspended effective the first day of the month  
25 following the month in which the previously retired member

. 142814. 1

underscored material = new  
[bracketed material] = delete

1 earns one hundred percent or more of the amount that causes a  
2 decrease or suspension of an old age benefit under the federal  
3 social security program or fifteen thousand dollars (\$15,000),  
4 whichever is less. When the pension is suspended, the  
5 following conditions shall apply:

6 (1) the retired member who is subsequently  
7 employed by an affiliated public employer shall become a  
8 member. The previously retired member and the subsequent  
9 affiliated public employer shall make the required employee and  
10 employer contributions, and the previously retired member shall  
11 accrue service credit for the period of subsequent employment;  
12 and

13 (2) when a previously retired member  
14 terminates the subsequent employment with an affiliated public  
15 employer, he shall retire according to the provisions of the  
16 Public Employees Retirement Act, subject to the following  
17 conditions:

18 (a) payment of the pension shall resume  
19 in accordance with the provisions of Subsection A of this  
20 section;

21 (b) unless the previously retired member  
22 accrued at least three years of service credit on account of  
23 the subsequent employment, the recalculation of pension shall:  
24 1) employ the form of payment selected by the previously  
25 retired member at the time of the first retirement; and 2) use

. 142814. 1

underscored material = new  
[bracketed material] = delete

1 the provisions of the coverage plan applicable to the member on  
2 the date of the first retirement; and

3 (c) the recalculated pension shall not  
4 be less than the amount of the suspended pension.

5 D. The provisions of Subsection C of this section  
6 shall not apply to a retired member who is appointed chief of  
7 police of an affiliated public employer, other than of the  
8 affiliated public employer from which retired, or who is  
9 appointed undersheriff if the retired member files an  
10 irrevocable exemption from membership with the association  
11 within thirty days of appointment. For purposes of this  
12 subsection, each sheriff's office shall be limited to one  
13 undersheriff. The irrevocable exemption shall be for the chief  
14 of police's or the undersheriff's term of office. Filing of an  
15 irrevocable exemption shall irrevocably bar the retired member  
16 from acquiring service credit for the period of exemption from  
17 membership.

18 E. The provisions of Subsection C of this section  
19 shall not apply to any retired member who is subsequently  
20 employed by an employer who is not an affiliated public  
21 employer.

22 F. The provisions of Subsection C of this section  
23 shall not apply to a retired member who is elected to serve a  
24 term as an elected official if the retired member files an  
25 irrevocable exemption from membership with the association

. 142814. 1

underscored material = new  
[bracketed material] = delete

1 within thirty days of taking office. Filing of an irrevocable  
2 exemption shall irrevocably bar the retired member from  
3 acquiring service credit for the period of exemption from  
4 membership.

5 G. Beginning January 1, 2004 and continuing until  
6 January 1, 2014, the provisions of Subsection C of this section  
7 shall not apply to a retired member and the member shall not be  
8 required to suspend retirement benefits if the member begins  
9 employment with an affiliated public employer and has not been  
10 employed as an employee or independent contractor by an  
11 affiliated public employer for at least twelve consecutive  
12 months from the date of retirement to the commencement of  
13 employment or reemployment with an affiliated public employer.  
14 If the retired member returns to employment without first  
15 completing twelve consecutive months of retirement, the retired  
16 member shall remove himself from retirement. A retired member  
17 who returns to employment during retirement pursuant to this  
18 subsection is entitled to continue to receive retirement  
19 benefits but is not entitled to acquire service credit or to  
20 acquire or purchase service credit in the future for the period  
21 of the retired member's employment with an affiliated public  
22 employer.

23 [~~G.~~] H. The pension of a member who has three or  
24 more years of service credit under each of two or more coverage  
25 plans shall be determined in accordance with the coverage plan

. 142814. 1

underscored material = new  
[bracketed material] = delete

1 that produces the highest pension. The pension of a member who  
2 has service credit under two or more coverage plans but who has  
3 three or more years of service credit under only one of those  
4 coverage plans shall be determined in accordance with the  
5 coverage plan in which the member has three or more years of  
6 service credit. If the service credit is acquired under two  
7 different coverage plans applied to the same affiliated public  
8 employer as a consequence of an election by the members,  
9 adoption by the affiliated public employer or a change in the  
10 law that results in the application of a coverage plan with a  
11 greater pension, the greater pension shall be paid a member  
12 retiring from the affiliated public employer under which the  
13 change in coverage plan took place regardless of the amount of  
14 service credit under the coverage plan producing the greater  
15 pension, provided the member has three or more years of  
16 continuous employment with that affiliated public employer  
17 immediately preceding or immediately preceding and immediately  
18 following the date the coverage plan changed. The provisions  
19 of each coverage plan for the purpose of this subsection shall  
20 be those in effect at the time the member ceased to be covered  
21 by the coverage plan. "Service credit", for the purposes of  
22 this subsection, shall be only personal service rendered an  
23 affiliated public employer and credited to the member under the  
24 provisions of Subsection A of Section 10-11-4 NMSA 1978.  
25 Service credited under any other provision of the Public

. 142814. 1

1 Employees Retirement Act shall not be used to satisfy the  
2 three-year service credit requirement of this subsection. "

3 Section 3. EFFECTIVE DATE. --The effective date of the  
4 provisions of this act is July 1, 2003.

5 - 9 -

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

underscoring material = new  
[bracketed material] = delete